

IN THE LEASEHOLD VALUATION TRIBUNAL

UNDER S37 LANDLORD & TENANT ACT 1987

Case No	CHI/00ML/LVT/2007/0004
Property	Regency Court Withdean Rise London Road Brighton BN1 6YG
Applicant	Anstone Properties Ltd Rep by Howlett Clarke Solicitors
Respondents	The Lessees of Regency Court
Tribunal members	Ms H Clarke (Chair) (Barrister) Mr N Robinson FRICS Ms J K Morris
Date of hearing	10 January 2008
Date of decision	12 January 2008

1. THE APPLICATION

The Applicant freeholder applied for an order varying the leases of all the flats in Regency Court so as to dispense with the obligation on the landlord to provide a resident caretaker. Flat 33 had been the caretaker's residence until he vacated in January 2007 and remained in the ownership of the landlord.

2. THE DECISION

The Tribunal ordered that all the leases should be varied as asked. A copy of the Order is attached to this decision.

3. THE LAW

The relevant parts of s37 and s38 Landlord & Tenant Act 1987 provide:

s37(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

(5) Any such application shall only be made if...

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of

the total number of the parties concerned and at least 75 per cent. of that number consent to it.

S38 (6) The tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal:-

that the variation would be likely substantially to prejudice—

any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

4. THE INSPECTION

The Tribunal inspected the exterior of the property and the interior of Flat 33 immediately prior to the hearing. Regency Court comprises 5 blocks of purpose-built flats constructed in the 1960s containing 80 flats with some adjoining garages and shared garden areas between them. The property appeared to be in generally good condition. Flat 33 was in need of some internal refurbishment and redecoration.

5. THE HEARING

For the Applicant, the hearing was attended by Mr T Newey of Howlett Clarke Solicitors, Mr L Stoner of Anstone Properties, and Mr R Fryzer of Countrywide Property Management the managing agents. The following Respondents attended the hearing; Ms T Norkett (Flat 43 and co-Chair of the Leaseholders' Association); Mr M Pierson (Flat 30). Ms R Pickering (Flat 9) also attended but chose not to make any submissions. The Tribunal had received the Application and supporting documents from the Applicant. An email was received at the Tribunal's office after the hearing from Mr F W Hill, Flat 65. No other documentation or statement of case was received from any Respondent.

6. THE EVIDENCE

The Applicant produced to the Tribunal forms of consent from 62 lessees consenting to the variation. The majority of these were signed by the respective lessees. Some took the form of written notes of telephone calls (dated and identifying the message taker) recording oral consent. The Applicant also produced forms from 7 lessees refusing consent and opposing the variation. 10 lessees did not respond in either way. None of the lessees who opposed the

variation specified any reason for doing so, either on the consent form or in any other way.

7. The Applicant had circulated to the lessees a calculation of the costs involved in replacing the resident caretaker with a contracted-in service which indicated an annual saving to the lessees of nearly £19,000 on March 2007 figures. The Tribunal observed that the information contained a miscalculation. Although the Applicant was unable to assist on this point the Respondents stated that they had questioned this and Countrywide Property Management had told them at their AGM that the annual figure of £8,858.16 was correct. The Applicant explained that an out-of-hours service was already in place for emergencies. Ms Norkett stated that she had used the service but it had some shortcomings. In answer to questions from the Tribunal the Applicant stated that Flat 33 would revert immediately to the landlord's possession, and any subsequent expenditure on refurbishment would not be charged to the maintenance account. If the Tribunal made the order requested, the Applicant proposed to register the order against each flat title at the Land Registry, to send a copy to the mortgagee of each flat where applicable, and to attach a copy of the order to each counter-part lease.
8. The Respondents said that they supported the proposal because they did not want to bear the costs of refurbishing Flat 33 and felt there would be a costs saving thereafter. The Leaseholders' Association in general supported the proposal. The Respondents asked whether rent for the flat and other charges (eg council tax) since the date that the caretaker vacated, and whether the costs of the application itself and steps taken to notify interested persons, would be charged to the maintenance account. The Applicant wished to reserve its position on both matters. The Respondents were asked by the Tribunal whether this affected their position on the Application; they continued to consent to the variation. The email received from Mr F W Hill asked that the Tribunal should recognise the Regency Court Leaseholders' Association and raised the same question asked at hearing about the costs of the flat since January 2007.
9. THE DETERMINATION
The Tribunal was satisfied that the application passed the 'threshold' test specified by s37 in that more than 75% of parties consented to the variation and less than 10% opposed it. The Tribunal was also satisfied that dispensing with the employment of a resident caretaker could not be satisfactorily achieved unless all the leases were varied to the same effect because a single caretaker had hitherto served all the blocks.
10. The Tribunal noted that it had a discretion as to whether to make the order, and was required to consider whether any substantial

prejudice would be caused if the variation were made. No reasons for objecting had been put forwards by any Respondent, and no evidence of any prejudice had been submitted by any person. The evidence before the Tribunal indicated that year-on-year, there would be a saving to the lessees in the amount of service charge they would be required to pay.

11. Although the Applicant had not specified whether the costs of the application or the costs of the flat since January 2007 would be charged to the maintenance account, the Tribunal noted that the consents given by the lessees were not conditional upon any provision for the costs to be met. There was no application before the Tribunal for an order under s20C Landlord & Tenant Act 1985. No party had submitted any evidence or argument about whether the leases allowed for the costs to be recovered. It had not affected the consents given by the Respondents who attended the hearing. It appeared to the Tribunal that any dispute about the costs could properly be raised as a service charge challenge under the legislation. In the circumstances, these issues did not make it unreasonable for the variation to be effected.

12. The Tribunal therefore decided to make the variation as asked.

Dated---12 January 2008

Signed---*huc*----- Chair

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ORDER OF THE TRIBUNAL

UPON HEARING Solicitor for the Applicant and Ms T Norkett, Mr M Pierson, Respondents in person;

AND UPON it being recorded that the object of the variation is to dispense with the landlord's obligation to employ and house a resident caretaker;

AND UPON RECEIVING letters of consent to the variation from 62 of the 79 lessees of Regency Court, Withdean Rise, London Road, Brighton and the consent of the landlord; and receiving letters signalling opposition to the variation from 7 of the 79 lessees;

IT IS ORDERED AS FOLLOWS:

1. The lease of each of the flats 1-80 inclusive (with the exception of flat 33 which has remained in the ownership of the landlord) at Regency Court, Withdean Rise, London Road, Brighton shall be varied in accordance with the deletions and insertions set out in the Schedule attached to this Order with immediate effect.

2. Permission to the parties to apply for any consequential order.

Dated 12 January 2008

Signed H M Clarke H M Clarke (Barrister)
Chair of the Tribunal

RESIDENTIAL PROPERTY TRIBUNAL

CASE NO.

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1987 SECTION 37

CHII/OOML/LVT/2007/0004

BETWEEN:

ANSTONE PROPERTIES LIMITED (1)

Applicant

and

MR I WILSON and others (2)

LESSEES OF REGENCY COURT, BRIGHTON

Respondents

SCHEDULE OF VARIATIONS

Item No.	Page	Provision	Line	Variation
1	1	Recital (5)	2-3	Delete "(other than Flat Number 33 which is to be occupied by a resident Caretaker as hereinafter mentioned)"
2	1	Recital (6)	2-3	Delete "(including Flat Number 33 which is to be occupied by a resident Caretaker as aforesaid)"
3	5	Clause 4 (iii)	5-6	Delete "(other than Flat Number 33 which is to be occupied by a resident Caretaker as hereinafter provided)"
4	6	Clause 4 (v)	4-5	Delete "(including Flat Number 33 which is to be occupied by a resident Caretaker as hereinafter provided)"
5	6	Clause 4 (vii)	all	Delete the whole sub-clause
6	7	Clause 5 (v) (a)	2-3	Delete " a resident Caretaker and will also

				engage employ "
7	7	Clause 5 (v) (a)	3	Delete " other "
8	7	Clause 5 (v) (b)	all	Delete the whole sub-sub-clause
9	7-8	Clause 5 (vi)	3	Delete " and including the caretaker's Flat "
10	12	First Schedule First Part Para. 22 (a)	all	Delete the whole sub-paragraph
11	12	First Schedule First Part Para.22 (b)	2	Delete " the Caretaker or " Delete " other "
12	"	"	3-4	Delete "the Caretaker or " Delete " other "
13	"	"	4	Delete " the Caretaker or " Delete " other "
14	"	First Schedule First Part Para. 22 (c)	1	Delete " the Caretaker or " Delete " other "
15	"	"	3-4	Delete " the Caretaker or " Delete " other "
16	14	Second Schedule Para. 5	all	Delete the whole paragraph
17	15	Third Schedule Para 1 (D)	1	Delete " the resident Caretaker "
18	"	"	2-4	Delete " for the purpose of access and egress from the Caretaker's Flat (being numbered 43 in the Buildings) "
19	"	"	4	Delete " other "
20	"	"	5	Delete " the Caretaker's " Insert " their " in place of " the Caretaker's "
21	"	Third Schedule Para. 2	all	Delete the whole paragraph